

JANE DOE
11151 Valley Blvd #4886,
El Monte, CA 91734

Plaintiff in Pro Se

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JANE DOE,

Plaintiff,

v.

CITY OF CONCORD; CITY OF
COTATI; COUNTY OF CONTRA
COSTA; COUNTY OF SONOMA; GUY
SWANGER; TAMRA ROBERTS; CODY
HARRISON; RENELLE-REY
VALEROS; DIANA BECTON;
CHRISTOPHER WALPOLE; COLLEEN
GLEASON; JILL RAVITCH; ANNE
MASTERSON; LAURA PASSAGLIA;
BENNET KNIGHT; BAUDELIA
GALLO; and DOES 1 - 10, inclusive,

Defendants.

No. 3:20-cv-02432-JD

**SECOND AMENDED COMPLAINT FOR
DAMAGES AND FOR DECLARATORY
AND INJUNCTIVE RELIEF**

JURY TRIAL IS HEREBY DEMANDED

Plaintiff JANE DOE ("Plaintiff") alleges and complains the following, on information and belief except for information identified as being based on personal knowledge, which allegations are likely to have evidentiary support after a reasonable opportunity for further discovery.

INTRODUCTION

1. This is a civil rights complaint for damages and declaratory and injunctive relief arising from Defendants' violations of Plaintiff's fundamental rights to be free from discrimination, among others guaranteed by the United States Constitution, California Constitution, and

1 California laws. Defendants violated these rights when they conspired and practiced
2 discriminatory under-policing and selective under-enforcement against rape victims, including
3 Plaintiff.

4 2. This action stems from law enforcement personnel's response to a heinous crime - rape.
5 This action is about the discriminatory practice and ill will of law enforcement personnel, their
6 betrayal of public trust, and failure to protect residents from victimization by rapists. Our law
7 enforcement's response to rapes sends a catastrophic message to the whole of our society. To rape
8 victims: bringing a complaint is useless. To rapists: you're allowed to rape as many women as
9 you want and there will be no consequence!

10 3. Plaintiff's constitutional injuries have occurred since the first minute she came into
11 contact with law enforcement personnel who were supposed to support and protect her. Plaintiff
12 was not only a rape victim but also a victim of discrimination, uneven enforcement of law, and
13 law enforcement personnel's misconduct.

14 4. Without the ability to hold law enforcement accountable for its responses, rape victims,
15 including Plaintiff, will be far too likely to face hostility, disinterest, and concrete harms as a
16 result of their interactions with law enforcement. The people who mishandle rape cases are just as
17 bad as the perpetrators themselves because they are perpetuating rapes.

18 5. Plaintiff has been injured by Defendants' willful refusal to provide the
19 accommodations, advantages, privileges, and facilities of an unbiased and adequate sexual assault
20 investigation, and effective prosecution. Plaintiff has endured multiple traumas; first, the criminal
21 assault itself; second, a discriminatory, unconstitutional, unfair, and unequal treatment by the
22 people sworn to protect the public - the government officials and actors who have instead
23 discredited, dismissed, and denigrated Plaintiff as a rape victim; and finally, the additional trauma
24 of watching her case and hope for justice languish and ultimately vanish, due to the sabotage,
25 inaction and refusal to act by law enforcement personnel. Plaintiff's attacker will not see a day of
26 consequence for his violent assault against her and it was a byproduct of the law enforcement in a
27 discriminatory manner.

28 6. As described in more detail below, Defendants' (a) actions, (b) patterns of behavior, (c)

1 history of decision-making, and (d) departures from normal procedures in the course of their
 2 response to sexual assaults, demonstrate ongoing, intentional discrimination against rape victims,
 3 including Plaintiff. Specifically, Defendants have committed constitutional violations by
 4 implementing, promoting, or maintaining policies, practices, and/or customs that:

- 5 a. Refuse to implement and/or ignore proper training and supervision of government
 6 employees handling sexual assault cases;
- 7 b. Allocate more resources to other violent crimes than to sexual assaults;
- 8 c. Refuse to treat rape victims' testimony as adequate evidence regarding lack of
 9 consent;
- 10 d. Credit suspects' account over victims' version of story;
- 11 e. Fail to arrest and charge known perpetrators of sexual assault, which resulted in
 12 extremely low arrest and prosecution rate compared to other crimes;
- 13 f. Disproportionately refuse to thoroughly investigate sexual assault cases;
- 14 g. Disproportionately refuse to prosecute perpetrators of sexual assault;
- 15 h. Subject Plaintiff and other rape victims to future assaults by known perpetrators by
 16 failing to act on, investigate, and prosecute prior sexual assaults;
- 17 i. Treat sexual assault cases with less urgency and importance than is afforded to
 18 other types of violent crimes;
- 19 j. Treat victims of sexual assault, including Plaintiff, with less respect and devote
 20 less attention to their cases than to cases of other crimes (collectively referred to
 21 herein as the "Policies").

22 7. Defendants' unconstitutional and discriminatory conduct subjects Plaintiff and other
 23 victims of sexual assault to continued risk at the hands of perpetrators who are never held
 24 accountable.

25 **PARTIES**

26 8. Plaintiff, JANE DOE ("Plaintiff"), is a resident of County of Los Angeles, State of
 27 California. At all relevant and material times, Plaintiff was a visitor in the County of Sonoma and
 28 Contra Costa, State of California.

1 9. Defendant, City of Concord, is a public entity and municipal corporation duly
2 organized and existing under and by virtue of the laws of the State of California. Concord Police
3 Department (“Concord PD”) is an operating department of the City of Concord. The City of
4 Concord is responsible for the training, policies, procedures, and actions of Concord PD and its
5 employees. The City of Concord has direct supervisory authority over Concord PD and its
6 officers, and Concord PD policies are City policies for purposes of municipal liability.

7 10. Defendant, City of Cotati, is a public entity and municipal corporation duly organized
8 and existing under and by virtue of the laws of the State of California. Cotati Police Department
9 (“Cotati PD”) is an operating department of the City of Cotati. The City of Cotati is responsible
10 for the training, policies, procedures, and actions of Cotati PD and its employees. The City of
11 Cotati has direct supervisory authority over Cotati PD and its officers, and Cotati PD policies are
12 City policies for purposes of municipal liability.

13 11. Defendant, County of Contra Costa (“Contra Costa County”), is an incorporated
14 municipality organized and existing under the laws of the State of California and wholly located
15 within the State of California. Contra Costa County District Attorney’s Office (“CCDA”) is an
16 operating department of Contra Costa County. Contra Costa County is responsible for the
17 training, policies, procedures, and actions of CCDA and their employees. Contra Costa County
18 has direct supervisory authority over CCDA and their personnel, and CCDA policies are County
19 policies for purposes of municipal liability.

20 12. Defendant, County of Sonoma (“Sonoma County”), is an incorporated municipality
21 organized and existing under the laws of the State of California and wholly located within the
22 State of California. Sonoma County District Attorney’s Office (“SDA”) is an operating
23 department of Sonoma County. Sonoma County is responsible for the training, policies,
24 procedures, and actions of SDA and their employees. Sonoma County has direct supervisory
25 authority over SDA and their personnel, and SDA policies are County policies for purposes of
26 municipal liability.

27 13. Defendant Concord PD Officers/personnel: At all times herein mentioned, Plaintiff is
28 informed and believes, and thereon alleges that individual Defendants Chief of Police Guy

SWANGER (“SWANGER”), Detective Renelle-Rey VALEROS, ID 505 (“VALEROS”), Sergeant Cody HARRISON, ID 335 (“HARRISON”) and Lieutenant Tamra ROBERTS, ID 422 (“ROBERTS”), were residents of Contra Costa County and were civilian employees, agents and/or representatives of Concord PD. At all times relevant hereto, said Defendants were acting within the course and scope of their employment as officers, lieutenants, detectives, and/or civilian employees of Concord PD, a department and subdivision of Defendant City of Concord. At all times relevant herein, said Defendants were acting under color of law, under the color of statutes, ordinances, regulations, policies, customs, practices and usages of the City of Concord, Concord PD, and/or the State of California. At all times relevant hereto, Plaintiff alleges SWANGER served as the highest official for Concord PD and made the City of Concord and Concord PD policy for that office. As Chief of Police, SWANGER holds the command and policy making position with regards to Concord PD.

14. Defendant Cotati PD Officers/personnel: At all times herein mentioned, Plaintiff is informed and believes, and thereon alleges that individual Defendants Bennet KNIGHT (“KNIGHT”) and Baudelia GALLO (“GALLO”) were residents of Sonoma County and were civilian employees, agents and/or representatives of Cotati Police Department (“Cotati PD”). At all times relevant hereto, KNIGHT and GALLO were acting within the course and scope of his employment as police officer, sergeant, and/or civilian employees of Cotati PD.

15. Defendant CCDA Officials: At all times herein mentioned, Plaintiff is informed and believes, and thereon alleges that individual Defendant District Attorney Diana BECTON (“BECTON”) is an elected public official. Individual Defendants Assistant District Attorney Christopher WALPOLE (“WALPOLE”), and Deputy District Attorney Colleen GLEASON (“GLEASON”), were residents of Contra Costa County and were civilian employees, agents and/or representatives of CCDA. At all times relevant hereto, said Defendants were acting within the course and scope of their employment as civilian employees of CCDA, a department and subdivision of Defendant Contra Costa County. At all times relevant herein, said Defendants were acting under color of law, under the color of statutes, ordinances, regulations, policies, customs, practices and usages of Contra Costa County, CCDA, and/or the State of California. At all times

1 relevant hereto, Plaintiff alleges BECTON served as the highest official for CCDA and made the
2 County and CCDA policy for that office.

3 16. Defendant SDA Officials: At all times herein mentioned, Plaintiff is informed and
4 believes, and thereon alleges that individual Defendant District Attorney Jill RAVITCH
5 (“RAVITCH”) is an elected public official. Individual Defendants Chief Deputy District Attorney
6 Anne MASTERSON (“MASTERSON”), and Deputy District Attorney Laura PASSAGLIA
7 (“PASSAGLIA”), were residents of Sonoma County and were civilian employees, agents and/or
8 representatives of SDA. At all times relevant hereto, said Defendants were acting within the
9 course and scope of their employment as civilian employees of SDA, a department and
10 subdivision of Defendant Sonoma County. At all times relevant herein, said Defendants were
11 acting under color of law, under the color of statutes, ordinances, regulations, policies, customs,
12 practices and usages of Sonoma County, SDA, and/or the State of California. At all times relevant
13 hereto, Plaintiff alleges RAVITCH served as the highest official for SDA and made the County
14 and SDA policy for that office.

15 17. **CCDA and SDA Officials are not immune to this suit.** “Prosecutorial immunity
16 only protects the defendants from [§] 1983 damage claims; it does not protect them from suits for
17 injunctive relief.” Gobel, 867 F.2d at 1203 n.6. To determine whether particular actions warrant
18 absolute immunity, courts apply a “functional approach.” *Buckley v. Fitzsimmons*, 509 U.S. 259,
19 269 (1993). This approach “looks to ‘the nature of the function performed, **not the identity of the**
20 **actor who performed it[.]’” Id. (quoting *Forrester v. White*, 484 U.S. 219, 229 (1988)).
21 “Absolute immunity ‘is an extreme remedy, and it is justified only where any lesser degree of
22 immunity could impair the judicial process itself.’” *Garmon v. Cty. of Los Angeles*, 828 F.3d 837,
23 843 (9th Cir. 2016) (quoting *Lacey v. Maricopa Cty.*, 693 F.3d 896, 912 (9th Cir. 2012) (en
24 banc)). See also *Brooks v. Clark Cty.*, 828 F.3d 910, 915–16 (9th Cir. 2016) (discussing absolute
25 immunity). “[T]he official seeking absolute immunity bears the burden of showing that such
26 immunity is justified for the function in question.” *Burns*, 500 U.S. at 486. “The presumption is
27 that qualified rather than absolute immunity is sufficient to protect government officials in the
28 exercise of their duties.” Id. At 486-87. The purpose of absolute immunity is to eliminate**

1 susceptibility to legal actions that would inhibit prosecutors from aggressively prosecuting cases.
 2 When prosecutors fail to perform their duties, provide favoritism to suspects, and act in their own
 3 interest this Court should reject their absolute immunity. The following actions by CCDA and
 4 SDA Officials are neither prosecutorial in nature nor decisions of judgment but deplorable
 5 intentional antithesis of exercise of judgment:

- 6 a. Adopt “no policy” policy for prosecution of rape which constitutes deliberate indifference
 7 to rape victims safety and a general disinterest in prosecuting sexual assaults due to bias.
 8 The lack of written policy allows CCDA and SDA Officials to make wholly arbitrary
 9 decisions and is the moving force behind Plaintiff’s constitutional injuries;
- 10 b. When asked to adopt “offender-focused approach” and “expert witness strategy” that are
 11 recommended by National District Attorneys Association (“NDAA”) CCDA and SDA
 12 Officials maliciously refused, giving an ostensible reason that the case cannot be proved
 13 beyond a reasonable doubt and falsely told Plaintiff that jury would not believe expert
 14 witness. Bias against rape victims could not be clearer; <Prosecuting Alcohol-Facilitated
 15 Sexual Assault> ([http://atixa.org/wordpress/wp-](http://atixa.org/wordpress/wp-content/uploads/2014/04/pub_prosecuting_alcohol_facilitated_sexual_assault.pdf)
 16 [content/uploads/2014/04/pub_prosecuting_alcohol_facilitated_sexual_assault.pdf](http://atixa.org/wordpress/wp-content/uploads/2014/04/pub_prosecuting_alcohol_facilitated_sexual_assault.pdf)),
 17 <Cold Case Alcohol- and Drug-Facilitated Sexual Assault>
 18 ([https://www.sakitta.org/toolkit/docs/Cold-Case-Alcohol-and-Drug-Facilitated-Sexual-](https://www.sakitta.org/toolkit/docs/Cold-Case-Alcohol-and-Drug-Facilitated-Sexual-Assault.pdf)
 19 [Assault.pdf](https://www.sakitta.org/toolkit/docs/Cold-Case-Alcohol-and-Drug-Facilitated-Sexual-Assault.pdf)), <Understanding the non-stranger rapist>
 20 ([http://www.ncdsv.org/images/NDAA_UnderstandingNonstrangerRapist_TheVoice_vol](http://www.ncdsv.org/images/NDAA_UnderstandingNonstrangerRapist_TheVoice_vol_1_no_11_2007.pdf)
 21 [_1_no_11_2007.pdf](http://www.ncdsv.org/images/NDAA_UnderstandingNonstrangerRapist_TheVoice_vol_1_no_11_2007.pdf))
- 22 c. Willfully refuse to perform their duties pursuant to professional standards;
- 23 d. Intentionally and consistently credit the suspect’s version over Plaintiff’s account
 24 because she is a rape victim, notwithstanding objective evidence;
- 25 e. Callously disregard victim and community safety by using absolute immunity as a badge
 26 and shield for their discriminatory practice with no showing of a valid state interest;
- 27 f. Deter Plaintiff from pursuing truth and justice by falsely telling her that there was not
 28 enough evidence and creating purported reasons to justify their discriminatory and

- 1 unconstitutional treatment to Plaintiff because she is a woman reporting rape;
- 2 g. Falsely told Plaintiff there was no corroboration, despite corroboration is not required by
- 3 law for conviction; ([https://aequitasresource.org/wp-content/uploads/2018/09/Model-](https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf)
- 4 [Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf](https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf))
- 5 h. Made multiple untrue statements to Plaintiff that were far departure from professional
- 6 standards, jury instruction, and prosecution guidelines which is a strong indicator that
- 7 discriminatory intent was a motivating factor for CCDA and SDA Officials' wild spread
- 8 custom;
- 9 i. Act in their own personal interest to avoid losing at trial simply because rape cases are
- 10 hard to win and they pick easy cases to make their personal conviction rates look good
- 11 for their resumes (their powerful incentive to discriminate against rape victims);
- 12 j. Intentionally enforce a "non-law", maliciously requiring strong corroboration and physical
- 13 evidence to establish rape, a requirement that is not required by law or jury instruction,
- 14 reflecting higher criteria compared to other crimes with no showing of legitimate state
- 15 interest but solely aiming at conviction rate for prosecutor's own personal interest;
- 16 k. Maliciously ignore the fact that a victim's testimony alone is legally sufficient evidence
- 17 for filing charges but falsely told Plaintiff that there was no corroboration, reflecting
- 18 rape cases are less "worthy" of prosecution than other crime cases;
- 19 l. Willfully provide favoritism and leniency towards rapists, including WEAMER who
- 20 attacked Plaintiff;
- 21 m. Intentionally use their control and influence to shut Plaintiff out of criminal justice
- 22 system and reduce the number of perpetrators held accountable for sexual assaults;
- 23 n. Employ disparate unwritten policy to rape cases compared to other type of crimes; (In
- 24 2017 and 2018, CCDA's prosecution rate of rape is as low as 34% although few sex
- 25 crimes referred for prosecution by police and sheriff. This compares to a substantially
- 26 higher rate at every stage for non-rape crimes, reflecting the lowest priority of CCDA's
- 27 efforts. Shockingly SDA's prosecution rate of rape is 31%, even lower than CCDA.)
- 28 o. Use "insufficient evidence" as a disguise to deprive Plaintiff of her constitutional rights;

p. Employ unconstitutional and discriminatory practice against sexual assault victims, including Plaintiff; and

q. Misuse their power to undermine the quality of justice.

18. Defendant DOES 1 through 10 are not known or identified at this time. On information and belief, Plaintiff alleges that each Doe is in some manner responsible for the wrongs alleged herein, and that each such Defendant advised, encouraged, participated in, ratified, directed, or conspired to do, the wrongful acts alleged herein. When the true names and capacities of said Defendants become known, Plaintiff will seek relief to amend this complaint to show their true identities in place of their fictitious names as DOES 1 through 10. Defendants, DOES 1 through 10, and each of them, were the agents, employees and servants of the City of Concord and Cotati, Contra Costa or Sonoma County. Defendants DOES 1 through 10 acted in the course and scope of said agency, service and employment at all relevant times.

19. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated as a DOE is intentionally and negligently responsible in some manner for the events and happenings herein referred to, and thereby proximately caused injuries and damages as herein alleged.

20. Defendants, and each of them, did the acts and omissions hereinafter alleged in bad faith and with knowledge that their conduct violated well established and settled law.

21. All Defendants are sued in their official capacities for declaratory and injunctive relief as to all claims. All Defendants are also sued for damages arising from violations of 42 U.S.C. §§ 1983 and 1985, and for violations of state law and the California Constitution.

22. Defendants Concord and Cotati PD Officers, CCDA and SDA Officials, and DOES 1 through 10 are also sued in their individual capacities for their violations of Plaintiff's constitutional and statutory rights.

JURISDICTION AND VENUE

23. The Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1367(a) because this action arises under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1983 and 1985.

1 24. The Court may award damages and grant declaratory and injunctive relief for
2 constitutional violations pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 2201, and/or Federal Rules of
3 Civil Procedure 57 and 65.

4 25. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events that give
5 rise to this action occurred within this district and the Defendants reside in this district and state.

6 **CONCORD PD POLICIES AND PROCEDURES**

7 26. At all relevant times, all Concord PD members were required to be apprised of the
8 Fourteenth Amendment of the United States Constitution, and were required, at all times, to
9 follow the United States Constitution, the laws of California and also to comply with Concord
10 PD's Mission. Concord PD's Mission applies to all Concord PD members such as Defendant
11 Concord PD Officers. Each member of Concord PD, including Defendant Concord PD Officers,
12 is required to be familiar with Concord PD mission and must adhere to its directives.

13 27. Concord PD's Mission states "The members of the Concord Police Department are
14 dedicated to providing the highest quality police services in order to enhance community safety,
15 protect life and property, and reduce crime and the fear of crime. To do this, we pledge to develop
16 a partnership with the community, lead a community commitment to resolve problems, and
17 improve the safety and quality of life in our City."

18 (<https://www.cityofconcord.org/841/Department-Policy>)

19 28. Although providing the highest quality police services is Concord PD's mission no
20 written policies relating to investigation of rape exists which constitutes deliberate indifference to
21 rape victims safety and a general disinterest in investigating sexual assaults due to bias and
22 dismissive attitude.

23 **CRIMINAL PROSECUTION AND STATEWIDE SYSTEMIC FAILURE**

24 29. As the United States Supreme Court has explained, the prosecutor represents "a
25 sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at
26 all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that
27 justice shall be done." A prosecutor is held to a standard higher than that imposed on other
28 attorneys because of the unique function he or she performs in representing the interests, and in

1 exercising the sovereign power, of the state.

2 30. American Bar Association (“ABA”) Criminal Justice Standards for the Prosecution
3 Function: Standard 3-1.2 Functions and Duties of the Prosecutor (b) The primary duty of the
4 prosecutor is to seek justice within the bounds of the law, not merely to convict. Standard 3-4.4
5 Discretion in Filing, Declining, Maintaining, and Dismissing Criminal Charges (c) A prosecutor
6 may file and maintain charges even if juries in the jurisdiction have tended to acquit persons
7 accused of the particular kind of criminal act in question.

8 (https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/
9 [on/](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/))

10 31. In cases which involve a **serious threat** to the community, the prosecutor should not be
11 deterred from prosecution by the fact that in the jurisdiction juries have tended to acquit persons
12 accused of the particular kind of criminal act in question because prosecutors have an ethical
13 obligation to pursue difficult cases for public safety reasons.

14 32. Law enforcement agencies can clear, or “close,” offenses in one of two ways: by arrest
15 or by exceptional means. In certain situations, elements **beyond** law enforcement’s control
16 prevent the agency from arresting, formally charging, and prosecuting the offender. When this
17 occurs, the agency can clear the offense *exceptionally*. Such exceptional circumstances should not
18 occur frequently.

19 While “statistics have a place in disparate treatment cases, their utility ‘depends on all of
20 the surrounding facts and circumstances.’” *Sengupta v. Morrison-Knudsen Co.*, [804 F.2d](#)
21 [1075](#) (9th Cir. 1986) (quoting *Int’l Bhd. of Teamsters v. United States*, [431 U.S. 324, 340](#), [97 S.Ct.](#)
22 [1843](#), [52 L.Ed.2d 396](#) (1977)) (citation omitted). The following statistics show a stark pattern
23 of discrimination unexplainable on grounds other than sexual assault. California’s clearance and
24 arrest rate by different categories of crimes suggests that California devotes less resources in the
25 enforcement of rape laws:

26 ///

27 ///

28 ///

Type of data	Category	2018	2017	2016	2015	2014	2013
# of crimes reported	Homicide	1,739	1,829	1,930	1,861	1,697	1,745
# of crimes reported	Rape	15,500	14,724	13,695	12,793	9,397	7,459
# of crimes reported	Aggravated assault	105,315	105,391	104,307	99,149	91,681	88,809
# of clearances	Homicide	1,116	1,144	1,140	1,145	1,091	1,146
# of clearances	Rape	5,329	5,427	5,585	5,304	3,921	3,110
# of clearances	Aggravated assault	56,484	56,227	54,783	53,629	51,470	49,470
Clearance rate	Homicide	64.17%	62.55%	59.07%	61.53%	64.29%	65.67%
Clearance rate	Rape	34.38%	36.86%	40.78%	41.46%	41.73%	41.69%
Clearance rate	Aggravated assault	53.63%	53.35%	52.52%	54.09%	56.14%	55.70%
# of arrest	Homicide	1,416	1,501	1,440	1,439	1,427	1,423
# of arrest	Rape	2,541	2,557	2,558	2,467	2,444	1,601
# of arrest	Aggravated assault	90,089	88,693	87,415	88,348	87,735	82,700
Arrest rate	Homicide	81.43%	82.07%	74.61%	77.32%	84.09%	81.55%
Arrest rate	Rape	16.39%	17.37%	18.68%	19.28%	26.01%	21.46%
Arrest rate	Aggravated assault	85.54%	84.16%	83.81%	89.11%	95.70%	93.12%

Source: <https://openjustice.doj.ca.gov/resources/publications>

When the offenses are cleared by exceptional means, clearance rate is greater than arrest rate. The arrest rate of rape is much lower than clearance rate due to exceptional clearance which does not occur in homicide and aggravated assault. Compared to homicide and aggravated assault rape has shockingly low arrest rates even though rape is the most under-reported crime. What it means is most and tons of rapists walk free every single day in every corner of our community. When it comes to homicide and aggravated assault law enforcement personnel appear to be “competent” but they have a preference to close rape cases by exceptional clearance.

33. The only way to effectively diminish sexual assault is through the full force of the criminal justice system, which must treat sexual assault the same as it treats any other crime. Aggressive prosecution of sexual assault, at least to the same extent that other violent crimes are

1 prosecuted, is mandated by the Equal Protection Clause of the Fourteenth Amendment. Weak
 2 prosecutorial effort causes direct harm to the victims of sexual assault. It affects the assailants'
 3 behavior, the police response level, and the victim's own choices. First, if the perpetrator knows
 4 that he will not be held accountable for his actions, he is more likely to continue the abuse.
 5 Second, police behavior is affected by prosecutorial decisions. Police may try to justify their
 6 failure to arrest rapists as a waste of time and resources because prosecution of sexual assault is
 7 not favored by district attorneys. Thus police may defend their policy as substantially related to
 8 the important state interest of using limited resources most efficiently. This is not really a defense,
 9 but rather a passing of the buck to the District Attorney's office of responsibility for the
 10 discrimination. Third, lack of prosecutorial effort discourages the victim from asking for help.
 11 Statistics show that one of the primary reasons that women do not report sexual assault is the
 12 ineffectiveness of legal remedies. Victims' reluctance stems as much from the treatment they
 13 receive from the legal system as from their assailants. Prosecutors' lack of commitment often
 14 tacitly and overtly discourages victims. The problem has been called "a self-fulfilling prophesy."

15 34. According to NDAA, rape cases rarely have physical evidence that conclusively proves
 16 that a rape occurred. The evidence need not **conclusively** prove that a rape occurred; rather, it
 17 must give the jury a sufficient **context** in which to evaluate the victim's credibility.

18 ([http://atixa.org/wordpress/wp-](http://atixa.org/wordpress/wp-content/uploads/2014/04/pub_prosecuting_alcohol_facilitated_sexual_assault.pdf)
 19 [content/uploads/2014/04/pub_prosecuting_alcohol_facilitated_sexual_assault.pdf](http://atixa.org/wordpress/wp-content/uploads/2014/04/pub_prosecuting_alcohol_facilitated_sexual_assault.pdf))

20 35. Physical evidence can prove that the intercourse happened, but not the absence of
 21 consent. When there's no issue about who the assailant is DNA doesn't really contribute
 22 anything. Victim's reaction or whether or not victim stays contact with the perpetrator is not a
 23 crime element. It's prosecutor's duty to educate the jury the right way to identify whether or not a
 24 crime occurred. <https://kycir.org/2019/12/05/prosecution-declined/>

25 36. "You don't need it, if you believe [E.R. (victim)]," assistant County Attorney Kristin
 26 Vartanian argued to jurors. "You do not need any additional evidence to convict the defendant.
 27 You don't need fingerprints or DNA, you don't need an eyewitness to the crime."

28 (<https://newrepublic.com/article/152305/who-to-believe-sexual-assault>)

37. CCDA declares that their office's mission is to seek justice and enhance public safety for all their residents by fairly, ethically, aggressively and efficiently prosecuting those who violate the law, and by working to prevent crime. (<https://www.contracosta.ca.gov/7284/District-Attorney>)

38. SDA's mission statement indicates that "We shall seek truth and justice in a professional manner, while maintaining the highest ethical standards." (<http://da.sonoma-county.org/content.aspx?sid=1023&id=1379>)

39. AEquitas is a national technical assistance provider that specializes in the prosecution of gender-based violence and human trafficking crimes. AEquitas is a nonprofit organization that brings decades of prosecution experience and collaborative approach to offer law enforcement advice and resources across disciplines at no cost. (<https://aequitasresource.org/>)

40. Corroboration is not required by law for conviction. (<https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf>)

41. Much lower arrest rate of rape compared to other crime demonstrates law enforcement's intentional failure. (<http://big.assets.huffingtonpost.com/Justice-Gap-paper.pdf>)

Agency	Arrest rate between 2014 and 2018		
	Rape	Aggravated Assault	Homicide
Cotati PD	33%	58%	100%
Concord PD	18%	83%	Unknown

42. The low number of arrests and prosecutions for sexual assault is not a statistical anomaly. The fact that so few people are arrested and held accountable for sexual assault is a direct result of a persistent pattern of indifference toward and disregard for the safety of rape victims by law enforcement.

43. The failure to properly investigate and prosecute sexual assault cases has been motivated at least in part by animus toward women reporting rapes. Rape cases are deemed unworthy to investigate and prosecute.

44. California law enforcement agencies have reported rape at "unfounded" rates in recent years as high as 55% in Concord, 53% in Berkeley, and a statewide clearance rate of 40.8% in

2016 (higher than the national average of 37%). However, no “unfounded” has been reported for other types of crime. These fundamental investigative problems still remain today.

(<https://www.buzzfeednews.com/article/alexcampbell/unfounded#.wa7gk54Zr>)

45. Another reason that investigations of sexual assault were conducted so poorly—or not at all—is local governments’ historic failure and refusal to adequately train law enforcement personnel. City of Concord agreed with a finding in a 2016 Contra Costa County Grand Jury report stating that most county personnel and law enforcement dealing with victims of sexual exploitation of children lacked in-depth training. Between 2010 and 2019 Cotati PD did not provide any training to its officers regarding sexual assault.

46. Law enforcement personnel’s actions or inactions, protocol and procedures, disproportionately affect female sexual assault victims generally and violated Plaintiff’s equal protection rights. Law enforcement personnel’s intentional acts and their policies and procedures have created the danger of an increased risk of harm to Plaintiff and other victims of sexual assault who are disproportionately women. All these failures come from a “long-standing refusal” to properly investigate and effectively prosecute sexual assault crimes against women.

RAPE KIT BACKLOG

47. In 2015 there were 2400 untested rape kits found in Contra Costa County and all these untested rape kits were from female victims. However, there was never ever any backlog of DNA testing for homicide or other crimes.

48. The discriminatory practice against rape victims is long-standing, wildspread, and well settled. (https://www.huffpost.com/entry/the-rape-kit-backlog-shows-exactly-how-we-regard-women-in-this-country_n_5acfb5e1e4b016a07e9a8c65)

SEXUAL AND DOMESTIC VIOLENCE

49. It is a common misconception that most sexual assaults are committed by strangers. In reality, sexual assault can be perpetrated by anybody. A woman is more likely to be sexually assaulted by someone she knows— a friend, partner, date, classmate, neighbor or relative—than by a stranger in a dark alley. <Understand the Nature and Dynamics of Sexual Violence>

(<https://www.mocadsv.org/FileStream.aspx?FileID=3>)

1 <Dynamics of Sexual Violence> (<https://www.youtube.com/watch?v=gSh7CmWGa58>)

2 50. Five categories of sexual violence ([https://ndaa.org/wp-content/uploads/NDAA-DV-](https://ndaa.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-July-17-2017-1.pdf)
3 [White-Paper-FINAL-revised-July-17-2017-1.pdf](https://ndaa.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-July-17-2017-1.pdf)):

- 4 a. Rape or penetration of victim;
- 5 b. Victim made to penetrate someone else;
- 6 c. Non-physically pressured unwanted penetration;
- 7 d. Unwanted sexual contact, defined as the “intentional touching of the victim or
8 making the victim touch the perpetrator, either directly or through clothing . . .
9 without the victim’s consent”;
- 10 e. Non-contact unwanted sexual experiences, defined as the “unwanted exposure to
11 sexual situations (e.g., pornography); verbal or behavioral sexual harassment;
12 threats of sexual violence to accomplish some other end; and /or unwanted filming,
13 taking, or disseminating photographs of a sexual nature of another person”.

14 51. Researches show that distorted thoughts is one of the main reasons women stay in
15 abusive relationships. Being controlled and hurt is traumatizing, and this leads to confusion,
16 doubts, and even self-blame. For example, women shared: “I believed I deserved it.” Others
17 minimized the abuse as a way to cope with it, saying: “[I stayed] because I didn’t think that
18 emotional and financial abuse was really abuse. Because words don’t leave bruises,” and,
19 “Because I didn’t know what my boyfriend did to me was rape.”

20 ([http://www.ncdsv.org/images/Investigating%20and%20Prosecuting%20Intimate%20Partner%20](http://www.ncdsv.org/images/Investigating%20and%20Prosecuting%20Intimate%20Partner%20Sexual%20Assa....pdf)
21 [Sexual%20Assa....pdf](http://www.ncdsv.org/images/Investigating%20and%20Prosecuting%20Intimate%20Partner%20Sexual%20Assa....pdf)); ([https://law.lclark.edu/live/files/17491-countering-common-](https://law.lclark.edu/live/files/17491-countering-common-misperceptions-of-sa-victims)
22 [misperceptions-of-sa-victims](https://law.lclark.edu/live/files/17491-countering-common-misperceptions-of-sa-victims))

23 52. When NFL linebacker Ray Rice knocked his fiancée Janay Palmer unconscious in an
24 elevator in 2014, it didn't initially get much attention. He was accused of domestic violence and
25 suspended for two games. After a few weeks, he was formally charged, but he and Palmer were
26 married the next day. A security video quickly went viral showing Janay Palmer knocked down
27 and roughly dragged out of the elevator by Rice. Victim’s staying with their abuser does not erase
28 the crime committed by the abuser.

53. Both rape and battery are domestic violence and they should be treated the same way. No law requires a victim breaking up with their attacker to establish battery or rape. Relationship is not a deciding factor when it comes to a crime. Rape should be established based on specific facts and events instead of the relationship between the victim and perpetrator. The essential element of rape is lack of consent.

54. In 2008 the United Nations Security Council adopted Resolution 1820, noting that “rape and other forms of sexual violence can constitute war crimes, crimes against humanity, or a constitutive act with respect to genocide”. Rape is a means of robbing an individual of their personhood, of shaming, humiliating and attempting to destroy the individual. It is a crime in our penal code.

INJURIES SUFFERED BY VICTIMS OF SEXUAL ABUSE

55. The effects of sexual abuse are severe and varied. Victims of sexual abuse are harmed by "invisible wounds" which damage the victim-survivor's sense of self and his or her relationships with others. Injuries suffered by victim-survivors include feelings of confusion, shame, anxiety, guilt, low self-esteem, powerlessness, and depression. In addition to immediate injuries, many survivors of sexual abuse begin to develop symptoms much later, often years after the abuse has ended.

56. A common coping mechanism employed by victim-survivors as a method of surviving sexual abuse is denial. Denial is "accomplished by withholding conscious understanding of the meaning and implications of what is perceived." Because sexual abuse victims are often repeatedly subjected to the abuse, complete denial of the occurrence of sexual abuse is not very common. Rather, victim-survivors tend to deny the importance of the abuse. Despite conscious efforts by the victim-survivor to continue denying the importance of the abuse, the effects of the abuse usually intrude into the victim-survivor's everyday life. Denial may continue for years after the abuse has ended, until a triggering event occurs.

57. Coping mechanisms may preclude sexual abuse survivors from causally connecting their injuries to the abuse. In addition, the difficulties in perceiving the injury and in linking the injury to the abuse are compounded by the fact that such injuries continue to develop long after

1 the abuse itself ends.

2 58. As a result of sexual abuse, the victim-survivor may involuntarily develop coping
3 mechanisms which render her unable to perceive the connection between the sexual abuse and
4 psychological injuries. The pattern of sexual abuse becomes so well ingrained within the victim-
5 survivor's concept of normalcy that it becomes difficult for the victim-survivor to see the causal
6 nexus between her injury and the abuse. These coping mechanisms continue to operate long after
7 the abuse has ended. Therefore, by its very nature, sexual abuse renders its victim-survivors
8 unable to perceive the nexus between abuse and injuries. The inability to make this connection is
9 in itself an injury caused by sexual abuse.

10 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

11 59. Plaintiff grew up in a traditional household in a foreign county with long-standing
12 social prohibitions on talking about sexual matters.

13 60. In 2013 Edward WEAMER (“WEAMER”) was a police officer at Sonoma University
14 Police Department. In Nov 2013 via an online app “POF” WEAMER friended Plaintiff and
15 started chatting with her online.

16 61. Before Plaintiff met WEAMER in person she made a clear statement via text
17 messages that she didn’t want to rush sex and insisted to stick to her traditional culture.
18 WEAMER agreed to respect Plaintiff so Plaintiff decided to meet him in person.

19 62. Once Plaintiff met WEAMER in person, he didn’t keep his words and forced himself
20 on top of Plaintiff around ten times between 2013 and 2014.

21 63. Via Plaintiff’s message conversations with WEAMER he acknowledged that each
22 time Plaintiff said no and resisted. Plaintiff also accused WEAMER that he set her up but she was
23 not able to recognize what WEAMER had done to her was a crime due to her confusion about
24 rape. Plaintiff mistakenly thought rape was a crime committed by a stranger. < Understanding and
25 Countering Rape Myths >

26 ([https://www.nationalguard.mil/Portals/31/Documents/J1/SAPR/SARCVATraining/Barriers_to](https://www.nationalguard.mil/Portals/31/Documents/J1/SAPR/SARCVATraining/Barriers_to_Credibility.pdf)
27 [Credibility.pdf](https://www.nationalguard.mil/Portals/31/Documents/J1/SAPR/SARCVATraining/Barriers_to_Credibility.pdf))

28 64. In Aug 2014 Plaintiff broke up with WEAMER and never had contact with him again.

1 Over the years Plaintiff has been broken, and experienced depression, anxiety, and low self-
2 esteem but she didn't know where those came from until Oct 2019.

3 65. In Oct 2019 Plaintiff met with LA County prosecutor Peter Cagney and he explained
4 to Plaintiff what rape was. Plaintiff has realized what WEAMER had done to her was in fact rape.

5 66. Plaintiff finally gathered her courage to come forward on Oct 18, 2019. At the time
6 she believed that coming forward would be her first step to heal and it was her moral obligation to
7 report it to stop it. However, it turned out she was completely wrong and her life has been turned
8 upside down.

9 67. In 2013 Plaintiff was raped in Cotati. In 2014 WEAMER raped Plaintiff in Concord.
10 Plaintiff filed the police reports with Cotati PD and Concord PD respectively on Oct 18, 2019.

11 Cotati PD's discriminatory practice and custom against sexual assault

12 68. After the initial report was filed on Oct 18, 2019 Officer KNIGHT informed Plaintiff
13 of victims rights and followed up with Plaintiff the following week. However, approximately
14 three months after Plaintiff first reported the assaults WEAMER was still not contacted by
15 KNIGHT for investigation. Between Oct 2019 and Jan 2020 each time Plaintiff made enquiry
16 about the case KNIGHT falsely told Plaintiff he was working on the case but in fact nothing was
17 done.

18 69. Often, sexual predators are repeat offenders. The ability to determine the prior sexual
19 history of a defendant in the majority of sexual assault cases is a crucial matter. However, since
20 WEAMER refused to make a statement to Cotati PD he faced no investigation or scrutiny from
21 law enforcement. By dismissing Plaintiff's allegations, after little to no investigation conducted
22 KNIGHT maliciously concluded the incidents were consensual and the case was subsequently
23 submitted to SDA.

24 70. At all relevant time, KNIGHT's supervising sergeant GALLO, was aware of his
25 misconduct, including the false conclusion after no investigation done. Plaintiff obtained a copy
26 of the incident report prepared by KNIGHT and demanded GALLO for an explanation but
27 GALLO endorsed or approved those failures by taking no correction action. GALLO did nothing
28 to address the situation or to initiate a review of the matter. GALLO's silence and intentional

1 supervisory failures constitute violations of Cotati PD policy and procedures.

2 Concord PD's discriminatory practice and custom against sexual assault

3 71. After the initial interview with Concord PD Officer Shasta Vanetti on Oct 18, 2019,
4 the following month Plaintiff heard nothing from Concord PD, no follow-up and literally nothing.

5 72. In November 2019 Plaintiff left voice mail to Detective VALEROS but still heard
6 nothing from Concord PD in the following month.

7 73. In December 2019 after Plaintiff reached out to Sgt HARRISON she finally got a
8 phone call from Detective VALEROS.

9 74. Rather than ask relevant questions regarding crime elements the first thing VALEROS
10 wanted to confirm was "So are you still living in Southern California?" Perhaps he thought he
11 could treat this case less seriously because the victim lived far away.

12 75. Then Plaintiff was asked by VALEROS what's her ultimate goal which is the most
13 disgusting exhibition of law enforcement code of ethics. Such humiliating and degrading question
14 strongly suggests his discriminatory animus towards Plaintiff as a rape victim. Such question
15 demonstrates that VALEROS thought Plaintiff came forward for something else other than
16 justice. A victim of other crimes would not be asked about their goal to come forward.

17 <https://www.justice.gov/opa/file/799366/download>

18 76. Plaintiff was shocked to find out the suspect was not contacted nearly two months
19 after she reported the crime.

20 77. Despite there is no statute of limitations for rape VALEROS told Plaintiff this
21 happened five years ago. Even though WEAMER admitted through texts that each time Plaintiff
22 said no and resisted VALEROS told Plaintiff he could not prove it was WEAMER who was
23 texting which was a false and willful material misrepresentation intended to prevent Plaintiff
24 from pursuing the case. (There are many ways to authenticate messages under California
25 Evidence Codes)

26 78. No useful information was extracted during Plaintiff's conversation with VALEROS.
27 No question regarding the crime element was asked. The "investigation" conducted by
28 VALEROS was meaningless with respect to proving a crime. Instead, VALEROS' language

1 reflects how he deterred Plaintiff from pursuing the case.

2 79. Despite pretext phonecall is a commonly used technique to obtain confession from the
3 offender Valero opt not to use it, not to mention he would not spend any effort finding out if there
4 would be more women victimized by WEAMER.

5 80. In December 2019 Plaintiff was really concerned by VALEROS' attitude and she
6 reached out to Sgt HARRISON again. However, despite there is no statute of limitations for rape
7 and physical evidence is not required by law or jury instruction, HARRISON falsely announced
8 to Plaintiff that the case was six years old and there was no physical evidence at all for filing
9 charges. HARRISON didn't stop there. He further falsely told Plaintiff that there was no
10 indication of any type of sexual assault and appeared quite consensual which strongly suggests
11 how Concord PD Officers deterred Plaintiff from pursuing justice and Concord PD Officers'
12 discriminatory intent to discount and dismiss Plaintiff's allegation.

13 81. After the horrifying interactions with VALERO and HARRISON Plaintiff reached out
14 to Lieutenant ROBERTS. Throughout Plaintiff's conversation with ROBERTS she repeatedly
15 told Plaintiff that district attorney would not file charges therefore she would not present the case
16 to CCDA.

17 82. Despite victim's testimony is legally sufficient to establish probable cause and file
18 charges ROBERTS falsely told Plaintiff that her testimony was absolutely not enough and there
19 was no evidence of sexual assault.

20 83. When there's no issue about who the assailant is DNA doesn't really contribute
21 anything. Despite the suspect is known and admitted having sex with Plaintiff, despite what says
22 on jury instruction, ROBERTS falsely told Plaintiff "There needs to be physical evidence, uh,
23 either DNA evidence or a confession from the suspect. Um, and we don't have any of those
24 things. In this case, there's no DNA evidence."

25 84. The crime of battery (e.g. a punch) is established based solely on the perpetrator's
26 actions and/or intent. The victim's response to being punched is irrelevant. The victim need not
27 resist nor express unwillingness to being punched to establish a crime, nor is a victim's history of
28 being punched relevant. The relationship between the assailant and the victim does not make the

1 crime less seriously or make the victim suffer less, for example, a father punched his son.

2 85. While Plaintiff pointed out that WEAMER acknowledged each time Plaintiff said no
3 and resisted but ROBERTS challenged Plaintiff “But then you got back together with him and
4 continued.” It’s obvious that ROBERTS treat rape completely different from other crimes. Under
5 ROBERTS’ theory there would never be spousal rape and domestic violence.

6 86. There is no law requires victim act in certain way in order to prove she was raped.
7 ROBERTS’ stereotype about how victims should behave constitutes unlawful discrimination.
8 ROBERTS’ language also reflects her discriminatory intent to discredit Plaintiff and discard
9 Plaintiff’s allegation. ROBERTS’ announcement left Plaintiff feeling coming forward was a
10 punishment to herself and she should not have reported the incident to the police at all. Such
11 victim blaming does not occur with other types of crimes. Moreover, according to ROBERTS’
12 theory a man is entitled to rape a woman if they are in a relationship, suggesting a strong
13 purposeful animus towards Plaintiff.

14 87. Although victim’s reaction is not a crime element ROBERTS twisted Plaintiff’s
15 account of story and put words in Plaintiff’s mouth “You were okay with having sex.” by
16 ignoring how a victim would process trauma. Then ROBERTS falsely told Plaintiff the text
17 messages would only work in the suspect’s favor and there was no evidence of sexual assault.

18 88. Battery and rape are both domestic violence. The law does not require a victim break
19 up with the assailant to establish battery but ROBERTS told Plaintiff “This is a different
20 situation. You continue to get together with him.” ROBERTS imposed a non-law to require
21 Plaintiff break up with the suspect to establish rape. ROBERTS flat out told Plaintiff “Most
22 people, if they got raped, they wouldn’t get together with that person again.” Such remarks
23 strongly suggest an intention to treat sexual assault cases less seriously than other assaults, as well
24 as an animus against rape victims. ROBERTS’ pro-defendant attitude is capable of several
25 interpretations: perhaps she believed that men are always entitled to sex in a relationship, that
26 Plaintiff was not entirely blameless because she stayed contact with the attacker, that such assault
27 was less severe and traumatic because she was dating this suspect, or that state officials should
28 not intrude upon dating violence. Whatever the reason, ROBERTS’ language reflects an outdated

1 misconception concerning rapes that cannot be used as a source of differential treatment.
2 ROBERTS' statement also demonstrates her discriminatory intent to devalue Plaintiff's
3 allegation.

4 89. When Plaintiff pointed out rape should be treated the same way as battery ROBERTS
5 responded "I don't think I can understand what you are saying."

6 90. Regardless Plaintiff say no and resisted each time ROBERTS twisted it as sexual play.
7 ROBERTS also repeatedly declared "A district attorney would have a very hard time convincing
8 a jury of 11 people."

9 91. The language and attitude of Concord PD Officers prove that they made minimal or no
10 effort to investigate the suspect in Plaintiff's case. None has been done to see if there are more
11 women victimized by the suspect. None has been done in order to support Plaintiff's allegation.

12 92. ROBERTS went on and told Plaintiff "The district attorney's office won't prosecute
13 on a case like this." "If we don't have any evidence, then we don't submit the case to the district
14 attorney." "It is here in Contra Costa County, the district attorney's office would never file a case
15 like this. Um, I've been doing this for 18 years. I've worked sexual assault for five years. Um,
16 they will never file a case like this." Plaintiff's testimony is not treated as evidence by law
17 enforcement.

18 93. Often, sexual predators are repeat offenders. The ability to determine the prior sexual
19 history of a defendant in the majority of sexual assault cases is a crucial matter. However, since
20 WEAMER refused to make a statement to Concord PD he faced no investigation or scrutiny from
21 law enforcement.

22 94. In December 2019 Plaintiff filed a complaint with SWANGER but Plaintiff never
23 received any investigative result. SWANGER took no action to correct any failures or to
24 discipline his subordinates. By failing to discipline or act, SWANGER endorsed or approved the
25 unconstitutional conduct of individual officers.

26 95. Concord PD personnel did not inform Plaintiff of victims' rights as set forth in
27 California constitution. At that time, and at all relevant times, Concord PD personnel had full
28 knowledge of Concord PD's mission and awareness of proper investigation protocol.

1 96. At that time, and at all relevant times, Concord PD Officers were aware of Concord
2 PD's mission and their role as law enforcement personnel.

3 97. Plaintiff requested Concord PD's policy and procedures regarding sexual assault
4 investigation but no such thing existed.

5 CCDA's discriminatory practice and custom against sexual assault

6 98. In January 2020 CCDA declined to file charges against WEAMER. Before the non-
7 prosecution decision was made none of any member of CCDA met with Plaintiff in person, nor
8 did they ever speak to her about the alleged assaults.

9 99. Given the way how law enforcement personnel responded to rapes, Plaintiff asked
10 herself "Can you imagine how many victims didn't get the justice they deserved?"

11 100. On Jan 7, 2020 during a recorded phone call conversation GLEASON told Plaintiff
12 this was a he said she said case by ignoring the objective evidence. GLEASON announced that
13 there was NO EVIDENCE to prove it was not consensual by invaliding Plaintiff's testimony. By
14 intentionally ignoring the context GLEASON falsely told Plaintiff that the jury would interpret it
15 as rough sex and Plaintiff came forward because she was upset about WEAMER chasing other
16 girls. GLEASON took every word of WEAMER as true even though a normal person, through
17 inference, could easily tell WEAMER was lying. By ignoring the fact that Plaintiff texted
18 WEAMER he set her up GLEASON credited WEAMER because WEAMER falsely said Plaintiff
19 enjoyed the sex and put his penis in her vagina.

20 101. At the end of the phone conversation with GLEASON Plaintiff requested to speak
21 with her supervisor, WALPOLE.

22 102. On Jan 8, 2020 during a recorded phone call conversation WALPOLE declared that it
23 was their filing standard to file cases they believed they could win. "We wouldn't file cases if we
24 don't get a guilty verdict." (in violation of ABA standard) "It's a big hurdle." WALPOLE also
25 announced that they would need strong corroboration despite it was not required by law.

26 103. In 2018 in California the conviction rate of violent offenses is 56.8% ([https://data-](https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Crime%20In%20CA%202018%2020190701.pdf)
27 [openjustice.doj.ca.gov/sites/default/files/2019-](https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Crime%20In%20CA%202018%2020190701.pdf)
28 [07/Crime%20In%20CA%202018%2020190701.pdf](https://data-openjustice.doj.ca.gov/sites/default/files/2019-07/Crime%20In%20CA%202018%2020190701.pdf)). However, WALPOLE flat out told Plaintiff

1 “We only file cases we believe we can win. That’s our filing standard.” If WALPOLE’s statement
2 was true CCDA had better off showing the court and jury that they have 100% conviction rate
3 over the last decade since WALPOLE had at least ten years of experience in criminal prosecution.
4 In case CCDA cannot show 100% conviction rate they must explain why they filed those charges
5 that did not convict but tossed all rape cases.

6 104. Fortunately, CCDA’s performance report does not show 100% conviction rate.
7 ([https://www.contracosta.ca.gov/DocumentCenter/View/36056/District-Attorney-2015-16-](https://www.contracosta.ca.gov/DocumentCenter/View/36056/District-Attorney-2015-16-Performance-Report?bidId=)
8 [Performance-Report?bidId=](https://www.contracosta.ca.gov/DocumentCenter/View/36056/District-Attorney-2015-16-Performance-Report?bidId=))

9 105. When Plaintiff questioned about the use of expert witness WALPOLE falsely told her
10 many times jury would disagree with the expert. Despite stereotype about how victims should
11 behave is unlawful discrimination and it’s a prosecutor’s job to select unbiased jury WALPOLE
12 falsely told Plaintiff the jury would say “If I was in her shoes, I wouldn't have had the
13 relationship.”

14 106. By invaliding Plaintiff’s testimony WALPOLE valued WEAMER’s version because
15 WEAMER falsely said Plaintiff put his penis inside her and being upset about WEAMER seeing
16 other women was Plaintiff’s motive to pursue this case. WALPOLE also declared this was part of
17 the #Metoo movement.

18 107. Although Plaintiff’s motive is not a crime element WALPOLE attacked Plaintiff’s
19 motive of coming forward was the suspect seeing other women. Motive of victims of other
20 assaults would not be attacked as a target. Under WALPOLE’s theory, each cheater can get a pass
21 for rape. Every man can get away from jail time simply by alleging they are seeing multiple
22 women and the allegation is fabrication and retaliation.

23 108. The entire time WALPOLE tried his best to derail Plaintiff from pursuing the truth
24 and justice, reflecting WALPOLE’s conscious choice not to overcome common defenses. Rather
25 than uphold the law, educate the jury, and overcome common defenses, WALPOLE chose to act
26 as the suspect’s advocate.

27 109. At that time, and at all relevant times, GLEASON and WALPOLE were aware of
28 CCDA’s mission and his role as a prosecutor and supervisor.

110. In 2018 CCDA filed charges against CODY BACA **because the victim of sexual assault is male and male victims get better protection**. The DNA testing for this male victim was not delayed and his case got prosecuted even though there was no eyewitness other than the complaining witness. CODY BACA was eventually acquitted which is contradicted with WALPHOLE's notion that CCDA only file charges when they believe they can win. It also suggests that CCDA discriminate against Plaintiff due to her status as a **female** victim of sexual assault. <https://www.mercurynews.com/2019/09/04/nursing-assistant-at-walnut-creek-hospital-acquitted-of-sexual-assault-burglary/>

111. Male victims of sexual assault are treated more favorably than female rape victims like Plaintiff, carried out through the various roles of law enforcement personnel, by prioritizing and employing better investigative and prosecutorial methods to male victim cases.

112. On Jan 25, 2020 Plaintiff filed a complaint with CCDA regarding the constitutional violation and BECTON was put on notice.

113. By failing to discipline or act, Contra Costa County and BECTON endorsed or approved the unconstitutional conduct of individual employees.

114. Plaintiff requested CCDA's policy and procedures regarding sexual assault prosecution but no such thing was available.

115. BECTON failed to draft or implement procedures in her office to ensure proper investigation of rape cases and proper review and handling of sexual assault prosecutions.

SDA's discriminatory practice and custom against sexual assault

116. In Feb 2020 SDA declined to file charges against WEAMER. Before the non-prosecution decision was made none of any member of SDA met with Plaintiff in person, nor did they ever speak to her about the alleged assaults.

117. On Feb 10, 2020 during a recorded phone call conversation PASSAGLIA told Plaintiff this case was fairly old regardless of no statute of limitation for rape. Despite corroboration is not required by law PASSAGLIA announced "We don't have any opportunity to do any investigation or find any corroboration".

118. PASSAGLIA went on and told Plaintiff "It's not enough for me to say conclusively

1 what exactly occurred” and such statement is completely opposite to the prosecution guideline set
 2 forth by NDAA. Despite sexual assault cases rarely have witnesses other than the victim
 3 PASSAGLIA declared that “There is no opportunity to interview any witnesses and talk to people
 4 in real time.” which means PASSAGLIA did not treat Plaintiff as a witness. All statements made
 5 by PASSAGLIA are distorted legal information in order to conceal SDA’s discriminatory actions.

6 119. On Feb 15, 2020 Plaintiff emailed MASTERSON and encourage her to follow the
 7 prosecution guidelines but Plaintiff’s email was ignored, reflecting SDA’s dismissive attitude.
 8 MASTERSON also offered support to PASSAGLIA by her inaction.

9 120. At that time, and at all relevant times, PASSAGLIA and MASTERSON were aware of
 10 SDA’s mission and their role as a prosecutor.

11 121. In Feb 2020 Plaintiff filed a complaint with RAVITCH but no action was taken.

12 122. By failing to discipline or act, Sonoma County and RAVITCH endorsed or approved
 13 the unconstitutional conduct of individual employees.

14 123. Between 2010 and 2019 SDA provided no training whatsoever concerning adult
 15 sexual assault investigation and prosecution.

16 124. Plaintiff requested SDA’s prosecution policy for sexual assault but no such thing
 17 exists as Missoula County Attorney’s Office does. <MISSOULA COUNTY ATTORNEY’S
 18 OFFICE SEXUAL ASSAULT POLICY & PROCEDURE MANUAL> ([https://dojmt.gov/wp-](https://dojmt.gov/wp-content/uploads/SEXUAL-ASSAULT-POLICY-AND-PROCEDURE-MANUAL.pdf)
 19 [content/uploads/SEXUAL-ASSAULT-POLICY-AND-PROCEDURE-MANUAL.pdf](https://dojmt.gov/wp-content/uploads/SEXUAL-ASSAULT-POLICY-AND-PROCEDURE-MANUAL.pdf))

20 125. RAVITCH failed to draft or implement procedures in the District Attorney's Office to
 21 ensure proper investigation of rape cases and proper review and handling of sexual assault
 22 prosecutions.

23 126. The American Bar Association standard related to Prosecution Function says that the
 24 duty of the prosecutor is to seek justice, not merely to convict. Giving false statement to a victim
 25 is not prosecutorial in nature. Instead, CCDA and SDA Officials were afraid to lose the case and
 26 affect their personal performance. In another words CCDA and SDA Officials acted in their own
 27 interest and personal capacity during the employment as prosecutor.

28 127. The life-long devastating harm caused by sexual assault is profound and

1 exacerbated by Defendants' deprivation of Plaintiff's fundamental rights secured to her by laws.
2 The depth of trauma inflicted upon Plaintiff has a significant impact not only on the victim, but
3 on the entire community because of the scope and lasting effect of the harm, and the fact that
4 unpunished perpetrators are encouraged to repeat their crimes.

5 128. Plaintiff finally experienced the despair and emotional distress of living with the
6 knowledge that her rapist would never be held accountable for his act, and nothing was stopping
7 him from assaulting others. Plaintiff's rapist was well protected by law enforcement while she
8 was not and he walks free with the confidence that he can rape other women with no
9 repercussions. A rapist's words prevail and conquer in every aspect but none of Plaintiff's words
10 ever counts.

11 129. The depth of Defendants' discriminatory treatment of sexual assault victims is all the
12 more troubling given the recent expansion of societal awareness of and sensitivity to sexual
13 assault. The discriminatory treatment and deprivation of equal protection of the laws by
14 Defendants caused significant emotional injury to Plaintiff separate and apart from the harm she
15 suffered as a rape victim.

16 130. Upon information and belief, critical decision-making regarding the distribution of
17 resources and staffing, training of officers, detectives, and other personnel, treatment of victims
18 who come forward, and other policies and/or practices that led to the discriminatory denial and/or
19 hostile provision of services to Plaintiff were made by Defendants SWANGER, BECTON,
20 RAVITCH, and/or among others.

21 131. Failure of Concord PD, CCDA and SDA to adhere to mission statement and training,
22 permits and facilitates the unlawful conduct described above. Accountability systems of Concord
23 PD, CCDA and SDA, do not sufficiently detect or prevent unlawful conduct, Concord PD, CCDA
24 and SDA did not properly consider and resolve complaints from Plaintiff. Early warning system
25 of Concord PD, CCDA and SDA does not adequately identify or effectively respond to a need for
26 intervention to prevent future violations of constitutional rights of sexual assault victims.

27 132. Plaintiff's internal complaints were not formally investigated. Concord PD, CCDA and
28 SDA minimized the seriousness of Plaintiff's complaints by failing to investigate as a serious

1 complaint that could potentially result in discipline.

2 133. At its core, the current organizational structure of Concord PD, CCDA, and SDA is
3 not capable of adequately addressing the victimization and lifetime damage inflicted on sexual
4 assault victims or to stop repeat perpetrators, particularly those who sexually assault women they
5 know or who use drugs/alcohol to commit their sexual assaults.

6 <Educating Juries in Sexual Assault Cases>

7 http://www.ncdsv.org/images/AEquitas_EducatingJuriesInSexualAssaultCasesPart1_7-2010.pdf

8 134. Not having any written policy and procedure for investigation and prosecution of a
9 heinous crime – sexual assault, suggests that Concord PD, CCDA, and SDA disregard the known
10 or obvious consequence and it is a conscious choice.

11 *On-going institutional conspiracy*

12 135. In Jul 2020 Plaintiff requested materials related to WEAMER’s case from CCDA and
13 SDA, as well as crime statistics in order to see their pattern of performance. In response, by
14 asserting baseless privileges CCDA and SDA intended to prevent Plaintiff from obtaining any
15 materials that could help her better understand the facts of WEAMER’s case, the prosecutorial
16 misconduct that plagued it, and statistical evidence to demonstrate that the discriminatory practice
17 is so pervasive as to constitute intent. Such tactic supports an ongoing institutional conspiracy.

18 136. A victim of attempted murder would not be told that your attacker will not be
19 investigated because you escaped and you are not in immediate danger. A victim of vehicle theft
20 would not be told that your case is closed because your only car was stolen and you don’t have
21 another car to be stolen in the future.

22 137. However, JOSHUA K. CLENDENIN, city attorney of Concord, absurdly contends
23 that “Plaintiff has not adequately alleged that any credible threat exists that she will be subjected
24 to the specific injury about which she complains. She is a resident of Los Angeles County, she is
25 no longer in a relationship with WEAMER, and she has not had contact with him since August
26 2014. She has fallen far short of the necessary factual allegations required to demonstrate a
27 likelihood that she will be the victim of sexual assault in the City of Concord in the future.” (See
28 Dkt. 24)

138. Contra Costa County Counsel, PATRICK L. HURLEY, absurdly protests that “Plaintiff is no longer seeing E.W. It appears that plaintiff does not live in Contra Costa County. Plaintiff has alleged no facts to suggest that there is an imminent or immediate danger that she will be sexually assaulted again or that such a crime might take place in Contra Costa County.” (See Dkt. 19)

139. Sonoma County Counsel, MICHAEL A. KING, absurdly argues that “Plaintiff is no longer seeing WEAMER. He does not live in Sonoma County. Plaintiff does not live in Sonoma County. Plaintiff has alleged no facts to suggest that there is an imminent or immediate danger that she will be sexually assaulted again or that such a crime might take place in Sonoma County.” Sonoma County further argues that Plaintiff will undoubtedly be able to achieve all her stated goals for accountability in a civil action against WEAMER. Such statement further supports Sonoma County’s official policy to treat sexual assault as personal injury issue instead of a serious crime in violation of Cal. Const. Art. I, § 28 (a) (2). (See Dkt. 23)

140. Among other things, such statements are another piece of evidence that it’s official policy, practice, and custom to consistently and systematically provide substandard protection to victims of sexual assault and sexual assault victims are treated differently from other crime victims. Such statements sufficiently corroborate the high “unfounded” rates and low arrest/prosecution rates of sexual assault.

Law enforcement’s asserted legitimate reasons as pretext and
their real motivation behind the decision to abandon Plaintiff’s case

141. A prima facie case requires facts adequate to create an inference that an adverse decision was based on an illegal discriminatory criterion. Here, Plaintiff has alleged sufficient facts for a prima facie case of discrimination. A plaintiff can present evidence showing that the asserted legitimate reasons were false or a pretext for discrimination. Showing disparate treatment or policy enforcement is a permissible means to establish pretext. A plaintiff can prove pretext (1) indirectly, by showing that the defendants’ proffered explanation is ‘unworthy of credence’ because it is internally inconsistent or otherwise not believable, or (2) directly, by showing that unlawful discrimination more likely motivated the defendants. A plaintiff can also identify other

1 similarly situated crime victims Defendants did vigorously pursue their cases.

2 142. Defendants alleged that Plaintiff's case was six years old as an asserted legitimate
3 reason to drop Plaintiff's case and it is a pretext or discriminatory animus because there is no
4 statute limitation for rape charges in California. Andrea Constand was sexually assaulted by Bill
5 Cosby in 2003 and Cosby was charged in 2015 and found guilty on April 26, 2018. Further,
6 Defendants would not use being old as a reason to drop homicide cases. Murder and rape are
7 assaultive crimes against the person and, as such, are "offenses of the same class of crimes".
8 (*People v. Arias* (1996) 13 Cal.4th 92, 127; *People v. Alvarez* (1996) 14 Cal.4th 155, 188.) Robert
9 Alan Durst was brought to trial on March 2, 2020 for the death of Susan Berman who was killed
10 in Los Angeles in 2000. It is disparate treatment to drop rape cases for being old but pursue
11 murder cases even though they are much older.

12 143. Defendants' assertion is either false or pretextual that they didn't have any opportunity
13 to do any investigation because Defendants could have interviewed Plaintiff, Plaintiff's therapists
14 and victim advocates, and secured an expert witness in sexual assault. See California Criminal
15 Jury Instructions 851, Testimony on Intimate Partner Battering and Its Effects.

16 144. Defendants' assertion that there was no opportunity to interview any witnesses and
17 talk to people in real time is in fact a pretext to brush Plaintiff off. For example the CODY BACA
18 case that was recently prosecuted while the victim immediately reported the incident right after it
19 occurred, there was no eyewitness other than the male complaining witness because sexual
20 assault cases rarely have third party witnesses at the crime scene. The complaining witness,
21 whether male or female, is the person that law enforcement need to talk whether in real time or
22 not. According to California Criminal Jury Instructions 301, the testimony of only one witness
23 can prove any fact.

24 145. Defendants' assertion is either false or pretextual that they didn't have any opportunity
25 to find any corroboration. First, various non-sexual assaults cases obtained convictions without
26 any corroboration and simply based on a complaining witness's testimony. According to
27 California Criminal Jury Instructions 301, in a prosecution for forcible rape, an instruction that
28 the testimony of a single witness is sufficient may be given in conjunction with an instruction that

1 there is no legal corroboration requirement in a sex offense case. Second, Plaintiff provided
 2 Facebook messages as corroboration that the suspect acknowledged that Plaintiff resisted sex
 3 each time.

4 146. The concern that a jury might believe Plaintiff had consented to sex with Weamer is a
 5 pretext for unlawful discrimination. In 2018 in California the conviction rate of violent offenses is
 6 56.8% instead of 99%. Each case has some level of uncertainty as to whether the jury would
 7 believe the evidence or not. When dealing with the same level of uncertainty Defendants dropped
 8 female sexual assault cases first which resulted in the extremely low arrest and prosecution rate of
 9 sexual assault compared to other crimes against persons given the fact that most victims of sexual
 10 assault are female. Moreover, the primary purpose of prosecution is to seek justice within the
 11 bounds of the law, not merely to convict. For example, CODY BACA was vigorously prosecuted
 12 because the victim was male instead of female although eventually BACA was acquitted.

13 147. Defendants' weaknesses, implausibilities, inconsistencies, incoherencies, or
 14 contradictions in the reasons for the decision to abandon Plaintiff's case demonstrate that a
 15 reasonable trier of fact could rationally find the reasons not credible, and thereby infer Defendants
 16 did not act for the stated nondiscriminatory purpose and in fact acted for false, pretextual or
 17 discriminatory reasons. Defendants would not have abandoned Plaintiff's case if she were a
 18 victim of non sexual assault or she were a male victim of sexual assault. A reasonable jury would
 19 infer the motivation was discriminatory for the abandonment of Plaintiff's criminal complaint.
 20 Plaintiff has pled sufficient facts to establish a prima facie case of unlawful discrimination.

21 **FIRST CAUSE OF ACTION**

22 **Equal Protection (42 U.S.C. § 1983)**

23 **Against all Defendants**

24 148. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the
 25 paragraphs above.

26 149. Plaintiff, a rape victim, is a member of an identifiable group. She has been treated
 27 differently based upon illegitimate stereotypes and archaic notions of sexual assault. She further
 28 alleges that Defendants acted with discriminatory intent in discounting, invalidating, and

1 dismissing her allegation.

2 150. After Plaintiff reported sexual assaults to law enforcement multiple law enforcement
3 personnel spared no effort to discourage Plaintiff from seeking justice tacitly by challenging
4 Plaintiff in a manner that conveys blame and disbelief, and by actively outlining the
5 disadvantages of prosecution. They also gave Plaintiff distorted and incomplete legal information
6 that thwarted Plaintiff from seeking the State's assistance. Their position is that they are viewing
7 sexual assault as less than a regular crime. This practice of affording inadequate protection, or no
8 protection at all, to women who have complained of sexual assault is tantamount to an
9 administrative classification used to implement the law in a discriminatory fashion.

10 151. Including a police officer, a sergeant, and a lieutenant, multiple Concord PD
11 personnel's joint effort with same state of mind constitutes a tacit understanding to carry out the
12 prohibited conduct demonstrates that the discriminatory practice is so wildspread as to constitute
13 intent and official policy.

14 152. Including a police officer and a sergeant, different ranking of Cotati PD personnel's
15 joint effort with same state of mind constitutes a tacit understanding to carry out the prohibited
16 conduct demonstrates that the discriminatory practice is so wildspread as to constitute intent and
17 official policy.

18 153. Defendants' omissions and actions described above, when analyzed as a whole using a
19 contextualist approach, permit the inference that Plaintiff's individual case was treated differently
20 without a rational basis and showcase Defendants' custom and practice of intentional
21 discriminatory under-policing and selective under-enforcement. Defendants intentionally provide
22 unequal protection to sexual assault victims in the form of failing to respond with equal effort to
23 sexual assault victims the same as Defendants do with victims of other crimes.

24 154. There was no reason for the misconducts and ill treatments other than animus toward
25 victims of sexual assault. Such conducts are not at all related to any governmental purpose and
26 they are a far deviation from commonly accepted procedures. It's not a single word, not a single
27 act, but a series of conducts that demonstrate Defendants' pattern of deliberate indifference and
28 unconstitutional practice to discourage the vigorous prosecution of violent crimes against sexual

1 assault victims.

2 155. Plaintiff has been deprived of her rights of equal protection under the law – and as of
3 the date of this filing, continues to be deprived of these rights – on account of sexual assault, in
4 violation of the Fourteenth Amendment to the United States Constitution, in that she has been
5 afforded less favorable terms and conditions than victims of other assaults/crimes, and continues
6 to be afforded less favorable terms and conditions. As a consequence, Plaintiff, as a victim of
7 sexual assault, obtained less protective resources of the state compared with victims of other
8 assaults/crimes.

9 156. The devaluation of sexual assaults burdens a particular set of victims. The laws against
10 violence were not and will not be uniformly enforced. Because the vast majority of victims of
11 sexual assault are women, discriminatory practice has an unjustified disparate impact on women.
12 Rape is the most under-reported crime. 63% of sexual assaults are not reported to police.

13 <Statistics about sexual violence>

14 [https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-](https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf)
15 [about-sexual-violence_0.pdf](https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf))

16 157. The requisite discriminatory intent is just as easy to establish with regard to the policy
17 of dropping numerous sexual assault charges as it is with poor police response. The extreme
18 disparate impact itself may be a starting point for intent. Also, the Supreme Court suggested in
19 *Arlington Heights*, 429 U.S. 252 (1977) that the historical background of a policy is relevant in
20 determining whether it has a discriminatory purpose. The historical background of
21 nonprosecution of sexual assault charges stems from the doctrine of “he said she said”. This
22 doctrine both constitutes respect for the man's creditability, [and] disempowers women by
23 refusing to recognize their most basic rights. Given the force of law in sexual assault situations, a
24 reliance on this doctrine of “he said she said” must be understood as an intent to perpetuate male
25 rule within the society and discredit female victims. Particularly this doctrine would not be
26 utilized for nonprosecution of non-sexual assault cases with only one eye-witness. This historical
27 background should be sufficient to show an intent to harm women, whether conscious or
28 “mechanical”, for the sake of an equal protection claim. In *Mississippi University for Women v.*

1 *Hogan*, 458 U.S. 718 (1982) the Supreme Court held that the discriminatory intent need not be
 2 conscious, but may be based on "the mechanical application of traditional, often inaccurate,
 3 assumptions about the proper roles of men and women."

4 158. Discrimination against rape victims puts victims at a unique disadvantage in the
 5 criminal justice system, decreasing the rate of reporting rape and increasing the rate of claims
 6 withdrawn by victims. <Rape and Sexual Assault in the Legal System>
 7 [https://www.womenslawproject.org/wp-content/uploads/2016/04/Rape-and-Sexual-Assault-in-](https://www.womenslawproject.org/wp-content/uploads/2016/04/Rape-and-Sexual-Assault-in-the-Legal-System-FINAL.pdf)
 8 [the-Legal-System-FINAL.pdf](https://www.womenslawproject.org/wp-content/uploads/2016/04/Rape-and-Sexual-Assault-in-the-Legal-System-FINAL.pdf))

9 **SECOND CAUSE OF ACTION**

10 **Gender-based Civil Conspiracy (42 U.S.C. §§ 1983 and 1985)**

11 **Against all Defendants**

12 159. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the
 13 paragraphs above.

14 160. Starting on Oct 18, 2019 Defendants, in whole or part, conspired among themselves
 15 and with others for the purpose of depriving, directly or indirectly, Plaintiff of equal protection
 16 under the law with the intent to deny her right to be treated fairly and equally.

17 161. The conduct described above, when viewed in total, is conscience shocking. Each
 18 member of this conspiracy shared the same conspiratorial objective.

19 162. Defendants engaged in a conspiracy among themselves and with others based on
 20 discriminatory animus for the purpose of depriving, directly or indirectly, Plaintiff's right to equal
 21 protection under the law in violation of 42 U.S.C. § 1985(3), with the object of that conspiracy
 22 being to conceal the fact that the complaints of crime made by female victims, including Plaintiff,
 23 are less important to Concord and Cotati PD, CCDA, and SDA than complaints made by
 24 similarly-situated male rape victims.

25 163. Defendants engaged in oral, written, and electronic communications, and/or
 26 endorsement and support among themselves and with others regarding: a) their tacit agreement to
 27 treat Plaintiff differently; b) actions taken to deter Plaintiff from pursuing the truth and justice;
 28 and c) their effort to support each other's unconstitutional actions and discourage vigorous

1 prosecution of sex crimes against women.

2 164. Defendants conspired among themselves and with others to deprive Plaintiff of equal
3 protection of the laws as alleged in this Complaint based on animosity toward Plaintiff as a
4 woman reporting rape.

5 165. Defendants' series of omissions and actions described above, when analyzed as a
6 whole using a contextualist approach, permit the inference that Defendants have a meeting of the
7 minds to violate Plaintiff's constitutional rights.

8 166. Between January and February 2020 CCDA and SDA Officials made multiple untrue
9 statements that were far departure from professional standards, jury instruction, and prosecution
10 guidelines by employing their discriminatory policy towards female rape victims, in order to
11 prevent Plaintiff from exercising her constitutional rights.

12 167. Defendants, in part or whole, directly or indirectly, have used their control and
13 influence to reduce the number of perpetrators held accountable for rapes.

14 168. As a result of said conspiracy Plaintiff has suffered, is suffering, and will continue to
15 suffer injuries, including but not limited to continued trauma, humiliation, emotional distress,
16 anxiety, depression, stigma, and embarrassment.

17 169. Defendants' failure to prevent or aid in preventing a conspiracy under 42 U.S.C. §
18 1985 of which the Defendants had knowledge and the power to prevent is also in violation of 42
19 U.S.C. § 1986.

20 **THIRD CAUSE OF ACTION**

21 **Municipal Liability for Unconstitutional Policies, Customs, and Practices (42 U.S.C. § 1983)**

22 **Against all Defendants**

23 170. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the
24 paragraphs above.

25 171. On and for some time prior to Oct 18, 2019 (and continuing to the present date)
26 Defendants deprived Plaintiff of the rights secured to her by the Fourteenth Amendments to the
27 United States Constitution, in that said Defendants and their supervising and managerial
28 employees, agents, and representatives, acting with gross negligence and with reckless and

1 deliberate indifference to the rights of the public in general, and of Plaintiff, and of persons in her
 2 class, situation and comparable position in particular, knowingly maintained, enforced and
 3 applied officially recognized policies, practices or customs of:

4 (a) Employing and retaining law enforcement personnel, including , Concord and Cotati
 5 PD Officers, CCDA and SDA Officials, and DOES 1-10, who had dangerous propensities
 6 for discriminating against rape victims by failing to follow mission of Concord PD, Cotati
 7 PD, CCDA, and SDA, and/or well established laws;

8 (b) Failing or refusing to competently and impartially investigate allegations of
 9 misconducts, failing or refusing to enforce established administrative procedures, to
 10 ensure victims and community safety, despite Defendants' knowledge of abuse and
 11 misconduct;

12 (c) Having and maintaining an unconstitutional custom of discriminatory under-policing,
 13 selective under-enforcement, favoritism toward rapists, and/or hostile provision of
 14 services to Plaintiff, which also is demonstrated by inadequate training regarding these
 15 subjects, and Defendants have no valid justification for such policies, customs, and
 16 practice. The practices of Defendants, were done with a deliberate indifference to
 17 individuals' safety and rights; and

18 (d) Fostering and encouraging an atmosphere of lawlessness, abuse and unconstitutional
 19 misconduct, as to encourage their personnel to believe that discriminatory under-policing
 20 and selective under-enforcement would be tolerated, and to believe that unlawful acts
 21 would be overlooked without discipline or other official ramifications.

22 172. SWANGER, BECTON, and RAVITCH's failure to establish and implement any
 23 policy or protocol for sexual assault investigation and prosecution illuminates that the dismissive
 24 attitude towards sexual assault is so pervasive as to constitute discriminatory intent and official
 25 policy.

26 173. The practice implemented, maintained and still tolerated by Defendants, were
 27 affirmatively linked to and were a significantly influential force behind the injuries of Plaintiff.
 28 Such unconstitutional custom is and will be a threat to justice and community safety. Here is what

corrective action should look like: <https://www.wtoc.com/2019/11/09/assistant-da-fired-questioning-victims-immigration-status-dropping-sex-assault-case-police-say/>

FOURTH CAUSE OF ACTION

Municipal Liability – Failure to Train, Supervise, and/or discipline (42 U.S.C. § 1983)

Against all Defendants

174. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the paragraphs above.

175. On information and belief, the overwhelming majority of law enforcement personnel who handle sexual assaults remain woefully untrained, and fundamentally biased against sexual assault victims, making assumptions about why and when sexual assault victims behave in certain ways and excusing perpetrator conduct as acceptable and/or “normal” behavior.

176. Including a police officer, a sergeant, and a lieutenant, multiple Concord PD personnel’s improper tactics and lack of knowledge regarding sexual assault and domestic violence reflect clearly inadequate training and failure to train on the part of municipal entity.

177. Including a police officer and a sergeant, different ranking of Cotati PD personnel’s improper tactics and lack of knowledge regarding sexual assault and domestic violence reflect clearly inadequate training and failure to train on the part of municipal entity.

178. SWANGER, BECTON, and RAVITCH, as final decision makers, were personally put on notice by Plaintiff of the existence of violation but tacitly endorsed the alleged misconduct by failing to cease the violation, remedy the wrong, or discipline their subordinates. No internal investigation was done regarding Plaintiff’s civilian complaint. Plaintiff was never notified of any result of internal investigation. Internal Affairs, SWANGER, BECTON, and RAVITCH did not question it, but instead ratified it, the investigation procedure must be deemed to have been carried out in accordance with official policy.

179. GALLO, SWANGER, BECTON, and RAVITCH have acquiesced, condoned or ratified a custom, practice or policy of ongoing deficient performance and misconduct by their subordinates.

180. Under SWANGER, BECTON, and RAVITCH’s leadership the lax discipline gives

1 police officers and deputies the idea that their unconstitutional conduct would have no substantial
2 adverse consequences for them. Such intentional failure makes future misconduct is almost
3 inevitable. Concord PD's disciplinary and complaint processes, executed by policy or custom,
4 contributed to the police misconduct complained of because the procedures made clear to officers
5 that they could get away with anything.

6 181. Under SWANGER, BECTON, and RAVITCH's leadership the longstanding
7 extremely low arrest and prosecution rate of sexual assault compared to other crimes
8 demonstrates that the discriminatory practice is so pervasive as to constitute discriminatory intent
9 and official policy.

10 182. Given the longstanding extremely low arrest and prosecution rate of sexual assault
11 compared to other crimes SWANGER, BECTON, and RAVITCH knew or reasonably should
12 have known of the failure to train and implement effective policy, and the possibility that
13 deficient performance of the task may contribute to a civil rights deprivation.

14 183. City of Concord, City of Cotati, Contra Costa County, Sonoma County, Concord and
15 Cotati PD, SDA, and CCDA fail to refrain employees from discriminating against sexual assault
16 victims, including Plaintiff.

17 184. The failure of Defendants to provide adequate training and/or supervision with regards
18 to understanding crime elements, employing investigative tools, prosecuting sexual assaults,
19 selecting unbiased jury, and treating victims equally and fairly, caused the deprivation of the
20 Plaintiff's rights by, Concord and Cotati PD Officers, CCDA and SDA Officials, and DOES 1-10.
21 In other words, Defendants' failure to train and/or supervise is so closely related to the
22 deprivation of the Plaintiff's rights as to be the moving force that caused the ultimate injury.

23 185. SWANGER, GALLO, BECTON, and RAVITCH took no disciplinary actions against
24 their subordinates in response to their allegedly unconstitutional conduct. Their failure to
25 reprimand their subordinates was deemed that the municipal entities ratified their actions.

26 186. Defendants have demonstrated their deliberate indifference to widespread law
27 enforcement abuses by failing and refusing to impartially investigate civilian complaints, failing
28 to discipline personnel who commit acts of dishonesty and misconduct.

FIFTH CAUSE OF ACTION

Violation of Cal. Const. Art. I, § 7 – Equal Protection

Against all Defendants

187. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the paragraphs above.

188. Defendants violated Plaintiff's civil rights by having a widespread practice and/or custom of discriminatory under-policing and selective under-enforcement, when enforced, caused a constitutional deprivation to Plaintiff, although not authorized by written law or express municipal policy, was so permanent and well settled as to constitute a custom or usage with the force of law.

189. Defendants' custom was intentional and, when enforced, had a discriminatory impact on sexual assault victims. Plaintiff's case was not isolated incident. Plaintiff received disparate treatment relative to victims of other violent crimes. Defendants set out to make reporting and pursuing investigation of rapes as unpleasant and difficult as possible.

190. The constitutional injury inflicted by Defendants was caused by the persons with final policymaking authority at the City of Concord and Cotati, Contra Costa and Sonoma County, Concord and Cotati PD, CCDA, and SDA.

191. Defendants knew about the above-described conducts and facilitated them, approved them, condoned them, and/or turned a blind eye to the conducts and systematic failure.

192. The above-described conducts of Defendants constitute a violation of Article 1, § 7 of the California Constitution.

SIXTH CAUSE OF ACTION

Violation of Cal. Const. Art. I, § 28 (a) and (b) – Victims' Bill of Rights

Against all Defendants

193. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the paragraphs above.

194. California Constitution Art. I, § 28 (a) (2) provides that "Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare

1 of the people of California. The enactment of comprehensive provisions and laws ensuring a bill
 2 of rights for victims of crime, including safeguards in the criminal justice system fully protecting
 3 those rights and ensuring that crime victims are treated with respect and dignity, is a matter of
 4 high public importance. California's victims of crime are largely dependent upon the proper
 5 functioning of government, upon the criminal justice system and upon the expeditious
 6 enforcement of the rights of victims of crime described herein, in order to protect the public
 7 safety and to secure justice when the public safety has been compromised by criminal activity.”
 8 However, sexual assault against female victims is being treated by Defendants as a simple
 9 personal injury issue rather than a serious crime.

10 195. California Constitution Art. I, § 28 (a) (4) provides that “The rights of victims also
 11 include broader shared collective rights that are held in common with all of the People of the
 12 State of California and that are enforceable through the enactment of laws and through good-faith
 13 efforts and actions of California's elected, appointed, and publicly employed officials. These
 14 rights encompass the expectation shared with all of the people of California that persons who
 15 commit felonious acts causing injury to innocent victims will be appropriately and thoroughly
 16 investigated, appropriately detained in custody, brought before the courts of California even if
 17 arrested outside the State, tried by the courts in a timely manner, sentenced, and sufficiently
 18 punished so that the public safety is protected and encouraged as a goal of highest importance.”

19 196. California Constitution Art. I, § 28 (b) (1) provides that a victim shall be entitled “to
 20 be treated with fairness and respect for his or her privacy and dignity, and to be free from
 21 intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.”

22 197. Defendants have violated the rights of Plaintiff to be treated with fairness, respect, and
 23 dignity, by among other things:

- 24 a. Routinely and inappropriately impugning the credibility of sexual assault victims,
 25 including Plaintiff;
- 26 b. Falsely telling Plaintiff that the crime perpetrated against her was not actually
 27 criminal;
- 28 c. Willfully failing to inform Plaintiff of her rights as a crime victim; and

d. Maliciously using ostensible reasons to deter Plaintiff from exercising her constitutional rights.

198. In violation of California Constitution Art. I, § 28 (b)(17), Concord PD and CCDA personnel failed to inform Plaintiff of her crime victims' rights enumerated in California Constitution.

199. Defendants' conducts violated Plaintiff's rights that set forth in California Constitution she was entitled to be treated with fairness and respect for her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal justice process.

200. Concord PD and CCDA personnel failed to inform Plaintiff of the rights enumerated in California Constitution Art. I, § 28 (b) in violation of Plaintiff's crime victims' right.

SEVENTH CAUSE OF ACTION

Negligent Supervising, Training, Disciplining, and Retaining Employees

Against all Defendants

201. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the paragraphs above.

202. After being notified of the violation SWANGER, BECTON, and RAVITCH failed to establish new procedures to avoid future similar violations.

203. Defendants CITY OF CONCORD, CITY OF COTATI, COUNTY OF CONTRA COSTA, COUNTY OF SONOMA, SWANGER, BECTON, RAVITCH, and DOES 1 through 10 failed to provide adequate training, supervision, oversight and/or retention of Defendants ROBERTS, HARRISON, VALEROS, WALPOLE, GLEASON, MASTERSON, PASSAGLIA, KNIGHT, GALLO, and DOES 1 THROUGH 10 in spite of the known risk and foreseeable likelihood of breach of the foregoing duties, which permitted the violations described above.

204. Public officials should be held to a higher standard because of the power they hold. Defendants demonstrate their inability to exercise their duty without prejudice. If the average fast food employee exhibited a similar degree of discrimination they would be fired immediately. However, none of Plaintiff's complaints resulted in any discipline.

205. At all times relevant herein, Defendants CITY OF CONCORD, CITY OF COTATI,

COUNTY OF CONTRA COSTA, COUNTY OF SONOMA, SWANGER, BECTON, RAVITCH, and DOES 1 through 10 maintained, enforced, tolerated, permitted, acquiesced in, and ratified the administrative policy, practice and custom of assigning duties to ROBERTS, HARRISON, VALEROS, WALPOLE, GLEASON, MASTERSON, PASSAGLIA, KNIGHT, GALLO, and DOES 1 through 10 who are unable to competently discharge such duties due to their relative inexperience, incomplete or inadequate training, lack of knowledge, etc., to be ready or able to competently discharge their duties.

206. Defendants CITY OF CONCORD, CITY OF COTATI, COUNTY OF CONTRA COSTA, COUNTY OF SONOMA, GALLO, SWANGER, BECTON, RAVITCH, and DOES 1 through 10 failed to adopt a procedure to train and supervise their subordinates to avoid constitutional violations.

207. Defendants CITY OF CONCORD, CITY OF COTATI, COUNTY OF CONTRA COSTA, COUNTY OF SONOMA, SWANGER, BECTON, RAVITCH, and DOES 1 through 10 were aware of the obvious risks of not creating such an effective system and of not training officers and deputies regarding crime victims' civil rights.

208. Defendants ROBERTS, HARRISON, VALEROS, WALPOLE, COLLEEN GLEASON, MASTERSON, PASSAGLIA, KNIGHT, GALLO, and DOES 1 through 10 were, at the time each was hired and/or became unfit and/or incompetent to perform the work for which each was hired.

209. The negligence of Defendants CITY OF CONCORD, CITY OF COTATI, COUNTY OF CONTRA COSTA, COUNTY OF SONOMA, SWANGER, BECTON, RAVITCH, and DOES 1 through 10 in training/supervising and/or retaining Defendants ROBERTS, HARRISON, VALEROS, WALPOLE, GLEASON, MASTERSON, PASSAGLIA, KNIGHT, GALLO, and DOES 1 THROUGH 10 was a substantial factor in causing Plaintiff's harm.

EIGHTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

Against all Defendants

210. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the

1 paragraphs above.

2 211. Except for homicide, rape is the most serious violation of a person's body because it
3 deprives the victim of both physical and emotional privacy and autonomy. As a rape victim,
4 Plaintiff was particularly susceptible to emotional distress at that time but Defendants willfully
5 engaged in acts and omissions alleged herein with a discriminatory intent or a reckless disregard
6 for the probability of aggravating the emotional distress that Plaintiff was already suffering. Such
7 ill treatment is not what Plaintiff came forward for. Plaintiff certainly didn't walk into a police
8 station thinking her trauma would be lifted to another level by law enforcement personnel. Law
9 enforcement personnel's response to sexual assault has made Plaintiff feel like being murdered
10 would be better than being raped.

11 212. After Plaintiff gathered her courage to step forward and identify her assailant she has
12 been re-traumatized again and again at the hands of law enforcement personnel. The trauma
13 Plaintiff has experienced at the hands of Defendants prevented her from having any kind of
14 normal life.

15 213. As a direct and proximate result of the Defendants' outrageous and unlawful conducts
16 as described herein, Plaintiff has suffered and/or continue to suffer loss of trust, comfort,
17 protection, and support, humiliation, mental anguish, nervous shock, severe emotional distress,
18 and other special and general damages in amounts according to proof.

19 214. Punitive damages should be assessed against Defendants for the purpose of
20 punishment and for the sake of example.

21 **NINTH CAUSE OF ACTION**

22 **Violation of Unruh Civil Rights Act (Cal. Civil Code § 51)**

23 **Against all Defendants**

24 215. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the
25 paragraphs above.

26 216. Cal. Civil Code § 51, also known as Unruh Civil Rights Act, states that all persons
27 within the jurisdiction of this state are free and equal, and are entitled to the full and equal
28 accommodations, advantages, facilities, privileges, or services in all business establishments of

every kind whatsoever.

217. Defendants' policies, practices, and customs complained of herein violated Plaintiff's rights to be free from discrimination and victims' rights as secured by Article I, § 1, § 7, § 28(a) and (b) of the California Constitution and directly and proximately damaged Plaintiff as herein alleged, entitling Plaintiff to recover a minimum of \$4,000 for each and every offense pursuant to California Civil Code § 52(a) and § 52.1, in addition to other damages.

DECLARATORY RELIEF SOUGHT

218. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the paragraphs above.

219. Plaintiff respectfully prays for a declaratory judgment that Defendants, and each of them, have engaged in a pattern or practice of conduct that violated Plaintiff's rights under the Fourteenth Amendment to the United States Constitution, Art. I, §§ 1, 7, 13, 28 (a), 28 (b) of the California Constitution, Cal. Civil Code § 52.1, and/or California common law.

INJUNCTIVE RELIEF SOUGHT

220. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in the paragraphs above.

221. Plaintiff prays for a permanent injunction compelling BECTON, RAVITCH, and/or CCDA, SDA to file criminal charges against WEAMER.

222. Plaintiff prays for a permanent injunction disbaring CHRISTOPHER WALPOLE, COLLEEN GLEASON, ANNE MASTERSON, and LAURA PASSAGLIA.

223. Plaintiff also prays that the Court issue a permanent injunction against Defendants ordering them to:

- a. Set up Sexual Assault Investigations Task Force to examine current investigation and prosecution policies, practices and training related to sexual assault complaints, including the review of past case files;
- b. Properly train and supervise government employees handling sexual assault cases or evidence;
- c. Establish written policy and procedure manual for investigation and prosecution of

sexual assaults;

- d. Require and enforce trauma-informed approaches to investigation and prosecution of sexual assault cases;
- e. Increase prosecution rate of sexual assault to 50%;
- f. Treat sexual assault cases with the same urgency and importance afforded to other types of crimes;
- g. Provide adequate resources for investigation and processing of sexual assault cases;
- h. Treat victims of sexual assault with the same respect and attention to their cases as victims of other crimes; and
- i. Accurately and publicly report data reflecting the number of sexual assaults reported, investigated, prosecuted, and processed to conclusion within the criminal justice system on a bi-annual basis.

PRAYER

WHEREFORE, Plaintiff prays judgment against Defendants and each of them, as follows:

AS TO EACH CAUSE OF ACTION AS APPLICABLE

1. For general damages according to proof;
2. For special damages according to proof;
3. For exemplary damages as provided by law, in an amount to be proved against each individual Defendant;
4. For interest;
5. For civil penalties pursuant to Civil Code § 52;
6. For attorney's fees pursuant to 42 U.S.C. § 1988 and Civil Code §§ 52 and 52.1;
7. For reasonable costs of this suit;
8. For treble damages under Civil Code § 52.1;
9. For such other and further relief or sanction as the Court may deem just, proper, and appropriate.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury for all issues so triable.

1 Dated: Aug 12, 2021

2 /s/ JANE DOE

3 Plaintiff in Pro Se

CERTIFICATE OF SERVICE

I, Jane Doe, declare and say as follows:

I am over the age of eighteen years of age and am a party to this action. I reside in the County of Los Angeles, State of California. My business address is 11151 Valley Blvd #4886, El Monte, CA 91734, in said county and state.

On Aug 12, 2021 I electronically filed the following document(s):

Second Amended Complaint

with the United States District Court, Northern District of California by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Dated: Aug 12, 2021

/s/ Jane Doe

Plaintiff in Pro Se